

10/02847 A02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Assaf DEKEL
Serial Number: 10/031,450
I.A. Filing Date: August 6, 2002
Title: Method and Apparatus for Spinal Procedures
Art Unit: 3731
Examiner: Davis, Daniel J.

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

This letter is in response to a restriction requirement in the above referenced application, dated October 4, 2004. Applicant notes that the Examiner's letter relates to 55 claims, while applicants filed and paid for 56 claims. Applicant respectfully requests that claim 56 be examined with claims 1-55.

In response to the restriction requirement, applicant selects the embodiment of the combination of Figs. 4C and 5C. This embodiment reads on the genus claims 1-3, 14-28, 37-56, on the shield claims 4-13 and on claim 32, which corresponds to Fig. 5C.

Applicant, therefore, elects claims 1-28, 32 and 37-56, with traverse. Applicant notes that due to the following traverse, applicant has not performed a more accurate analysis of the species which would have added several more claims to the species, as species must be mutually exclusive, as stated in MPEP 806.04(f).

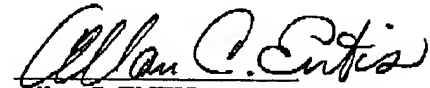
MPEP 806.04(b) states that where inventions are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP §806.05 - §806.05(i). If restriction is improper under either practice, it should not be required.

Condition (A) is applicable as stated by the Examiner in the office action. Condition (B) is applicable since the different species are related, i.e., not independent, under the definition in MPEP 802.01 and 808.01, in which the term "independent" is defined to mean that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect.

Therefore, the teachings of MPEP 803 and 808.02 apply and in order for the restriction to be proper the Examiner must show a serious burden on the examiner and at least one of: separate classification, separate status in the art, or different search fields.

Since all of claims 1-56 relate to apparatus for removing bone including a flexible rasp, it is clear to applicant that they are classified together and searched together and hence restriction is improper. Retraction of the restriction requirement is respectfully awaited, together with an examination on the merits.

Respectfully submitted,
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